THE GREAT INDIA RUBBER CASE.

The Argument of Francis B. Cutting. ON THE PART OF DAY, UPON THE MOTION FOR A FERFETUAL INJUNCTION ON THE EQUITY SIDE OF THE CIRCUIT COURT OF THE UNITED STATES, BEFORE JUDGES GRIER AND DICKER-SON; MARCH TERM, HELD AT TRENTON, NEW-

JERSEY, 1852.

It is under a sense of great depression It is under a sense of great depression that I rise to address the Court upon that hranch of this important controversy that has been thrown upon me. If an portant controversy that has been thrown upon me. If an exercited the wishes and desires of my client by a seavor to satisfy the wishes and desires of my client by a seavor to satisfy the wishes and desires of my client by a case of the county of my control of the county of the co

communicates the ideas of the patent ed. It is a rare thing to see a specification so clear, so from from all subject of debac, so fire from an integrities a wrong use of terms or of language. Using language in its orionary sender and agolf extura—giving the words their primary and obvious meaning—there is no ambiently in this specification. It is nothing more or less, the little or be it much, thus an invention of "a triple compound," which, when subjected to the action of great heat, produces a new fability. It does not a combination of sulphur and lead with inhor, and of a tring more, it is not to be desided that the materials used are eld; the rub er is old, the sulphur is old, the lead is old, and heat, as an element, is well known. What, then, is the aleged discovery? It is simply taking old things, making them in certain proportions, and whom combined, subjecting them to heat, and thus producing a new result. It was pateriable, there is no dispute upon that subject, at dispute the case of the grant, from two dispon other ground, conferred upon the paterial field in the volume of the grant, but not beyond it.

Now, have presen what the alleged discovery of 1041 is, it becomes not duty to pring ty your notice the reissand nators of 1049, and to show that it autificatly and art'n ly, by the most complicated machinery of language, expands and enlarges the outsine claim. Keeping in view the whole extent of the original revention, the morives and the inventions of the actors in the procurement of the patent of 1849 will heaven every apparent.

In the progress of the investigation, I will bring to your Henous' attention the fact, that as late as in 1846, Mr. Good, year was atterfy incomat of the capacity of steam when applied to rabber and applicant to rabber and an invention of the progress of the actors of the capacity of steam necessary and attention of the capacity of steam necessary and attention of the capacity of steam necessary and practical subject to the country long bears to part at a particular of t

with the first claim in the summary, and yielding for a moment to the midesty of my learned fix mis, which prevents them from functing the extraordinary claim to the application of heat severally to the manufacture of rubber, adopting the first of the moment of the patent of late, it is a moment the views which the modesty or policy of my learned friends induces them now to talk of the patent of late, I submit that even them it is far broader than the real invention. They insist it is only a patent for the application of heat to rubber, as described in the specification, to will implice with mapping and any other substance, and that it precludes the use of any other substance, and that it precludes the use of any other ampound, no matter what may be the other materials of the composition, as long as surphur is one of them. No may ter who the ingenuity, or the imagination, or even the "dreams" of mee may bring forth in the future, it is said to cover every possible interedient that can be universalled of sulphur, whether introduced directly as a substance, or instrumed into the rubber by means of vapor, it is asserted to be an indispendent of their patent. Instead of restricting themselves to a claim for the tricle compound they now insist that the use of rubber with sulphur alone, even if used in the share of a gas, or to the form of thour of sulphur, he an investion of their territory.

They also claim, under their new grant, the exclusive right to apply heat of all kinds to rubber and sulphur, he an investion of their territory.

They also claim, under their new grant, the exclusive right to apply heat of all kinds to rubber and sulphur, whether pr duces by atmospheria combustion from wood, or antinactic eva is, or heat of any description, even if drawn from the hebitangs of deaven, if that be heat or if obtained from the vapor of water when converted into steem. Their claim to the use of heat it as brundless as the regions of the world, and if these should be exhausted in the discovery of a new art, the use

was fell on the other side, that it was due to the patennes of account in some way for the remarkable eitherence in the language of the two documents, and to attempt to show that Go dyear was in fact the inventor of all that is ranted by the patent of 1849. Have they cone it? Far from it. By examining Mr. Browne's evidence, (plaintiffs proofs, new, page 456 and 91,1 who swears to the handwriting of a letter written by Gordyear to Dr. Jones and which is the only evidence adduced by the complainant. On this point, your floors will see how signally they have failed:

evidence adduced by the complainant. On this point, you Honors will see how eignally they have failed:

Emmar "M, No. 4."

DR Tanuas F. Jenis—Duce We I I it is not too late, will conpered and to the specification as follow: That I charm is my improvement, heating links Rioder, whether manufactured or not, in an axen on a cear roam, with rea plan or employment case. I prefer this to be included in the patern. The improvement for disposant of the order by potate, &c., I am and no pertucular should, I prefer that, I think for an amendment of a future time. Please write me at the place.

Exemet "M, No. 5," on Pany or Plantage which me at the place.

Exemet "M, No. 5," on Pany or Plantage, C. W. Newdow, Examina.

Charles Gospital, Esc.—Door Nic. I have your letter of the bith, in which you wonk to have claimed "The beating I mila Runber whether marinactored or not in an own or close room, with elliphir or sulphurous gas." This I cannot put in the the claim with out first describing it in the specification, which is not done so far as uniformly done if an amount understand it. By unmanufactured folia Rioder, I should understand the battles, or neases, as imported, are these to be heated, and if so, they, or neases, as imported, are these to be heated, and if so, they have the gendines to furnish me with all the particulars, that I may insert the thing understanding the foreign patents." Remoniber that any new matter may be sent averther for months to come. Should you see Mr. Gay, please say to turn that I have not a line from either of the particulars, that I may insert the story place and to the back of the letter is written in black, blue and red ink, the lookons?

To the back of the letter is written in black, blue and red ink, the lookons?

in howing:

" Gume of leth is reed cannot include the sulphur got.) Do. heating unmanufactured gum (gent further description " In the marginis written, in a different hand, " David Hall."

"Gome of leth is read cannot include the subbut got. I Do. heating amanufactured pum f year in further description."

In the marginie written, in a different band, "David Hall."

"Black ink. I filme ink. I Red ink.

This letter was rele riced to by my learned friend and brother (Mr. Blady) in opening this case. The first criticism that arises is, whether or not the evidence in reference to the authenticity of this letter is satisfictory. I think it is not, because, while the means exists of establishing its genutionness indispinably and when witnesses in battshein have been examined, and among others, the brothers of Goodyear, and his agents yan disenses, and others most familiar with his handwriting, it was secreted for a member of the bar who greates and in the sees, and others most familiar with his handwriting, it was secreted for a member of the bar who greates with with him, by correspondence some years ago and who is a partner of one of the cornect in this case, to prive his bandwriting, and even he admits that it does not look at the writing of Air. Goodyear usually does. Then, is any there are reasonable dualits of the genutiaeness of the letter. Here, Mr. Cutting read the testimony of Mr. Browne—" lizare you a partner in the business?" & & & & | Browne—" lizare you a partner in the business?" & & & & | Browne—" lizare you a partner in the business?" & & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you a partner in the business?" & & & | Browne—" lizare you will be seed to be almost lizare you have young the letter, but no year ca

Mr. VAN WINKLE—He was only exam-

ined, your Honor, on the last day of taking testimony. He, e the Court adjourned. ARGUMENT OF MR. CUTTING CONTINUED.

I yesterday remarked that the evidence I yesterday remarked that the evidence that had been offered of the genuinness of Mr. Goodyear's letter to Dr Jones, was of an exceeding by slish tharsofer, and was centainly open to a good deal of criticism; that it was very unestisfactory and enspici us that they should a we saffered so many parties, familiar with Mr. Goodyea's writing to leave the stand writiout proving that paper which constitutes their whole case upon this point, beyond a doubt. Your Honor sated, if we had any proof that it was not generate. I began to reply, but I had not a moment to observe, as the time for adjournmet had arrived, that the letter, not withstanding these parties had been so many months taking testimony, I won't say was kept back, but I will say that it was not produced, until the last day of the examination of

no matter in what proportions or decrees, or under what conditions, without belie reduced to any more practical snape or form, would constitute a good and wait patent.

Strike out of this new patent everything that pertains to the triple compound, and there is still 167 a new claim for the application of heat to rubber as described, without specifieg any mode or process, or giting any directions. This private leain, I heats, is utterly word. But if your honors please, I have a other proposition to submit spon this branch of the case. This patent not only prescribes no mode by which soft he are rubber, or rubber and the gas of sulphur, can be vulcanized, but I submit that, in point of fact, without the another of lead, they cannot be cured, and never have been cured so at to produce a vendible moundity. I call upon the learned counsel on the other side to put their firegraph on a particle of evidence which fends to show that my person ever did windcanize rubber combined with the gas of sulphur. There is not only no evidence that it can be sulcarized when thus united, but on the cutary, the winnesses show that it cannot be vulcanized by the admixture of sulphur their into the rubber in any proposition show that it cannot be vulcanized by the admixture of sulphur their into the rubber in any proposition show the sulcanized when the united but on the cutary, the winnesses show that it cannot be vulcanized by the admixture of sulphur dendrity into the rubber in any proposition show the sulcanization of the sulcanization of sulphur cambridge with the base of sulphur examined of the vulcanization of sulphur examined with rubber unight be vulcanized by into the sulcanization of sulphur examined with rubber unight be vulcanized as a to produce the appearance of a vanishing and the sulcanization of the sulphur examined with the sulphur examin

The feedball's Plinting, P. 153 one will support the successful manufacture of India tubber, when carred in a beater amount of the successful manufacture of India tubber, when carred in a beater amount of the Albani what time was it first discovered or knewn in the United States that rubber and sulphir, without the addition of read, would value time. A. I could not answer that, it was patented that way in known in 1843. I only knew this in 1843 of 1884. He also referred to the testimony of Mr. Harlow (vol. I. 2012).

hill.)

State when you first heard or knew that rubber could be raised without the nee of least, in some form combined with the seled with lead you Sargore you take 100 pounds of rubber, and mix with it five you have of working and aprend this upon cloud or into sheets, will to be a preparation vulcanize in steam? [Onected to.] Ass. I

sorb a pregaration volcanine in ateam? [Onjected to.] Ass. I triak it will

23. Here you are doubt of it? Ass. I have not.

23. Suppose you take a piece of this same choil, same prepared rubber, and piece it in an oven of heated atmosphere, will it volcanine? Ass. I think best.

23. Have you any doubt on this question? A. It will depend on what him of riche this competitud is pit on, whether on choth that his rubber on it or cloth that has no rubber upon it.

24. Suppose you put it into this heated atmosphere upon a piece of metal, wond, or any other substances arrower the last preof compound then meder these crumstances arrower the last preof compound then meder these crumstances arrower the last preof compound then meder these crumstances arrower the last preof compound then meder these crumstances arrower the last preseries question? A. It will not heat placed upon metal or wood,
and means other articles that might be capable of suspecting such a
sheet bot that it would heat if placed upon an article bud not
here kented before.

320. Where did you get this idea from? A. I learned thy experiseries.

Where did you get this idea from? A. I learned it by experience.

IN. Suppose this compound was made into ribber goods, as wilcanned tabber spoods are ordinarily made, and suppose in such
canned tabber spoods are ordinarily made, and suppose in such
state this compound or rubber and suppose in subbested aims spoors, would, or would not, the article thins made vial
learner? A. If I under stand the question, it would not.

2.7. Please state how you understand the question? A. I under
stand you to \$87, if a compound or rubber an unfour, above, was
ayread upon cloth that had ou rubber an it, and then soule up into
rubber ceate and other strickes from vulcanized poods, and put into an
oven heated up sufficiently high to heat a vicenizing compound,
would these goods heat made of rubber and sulpaur alone?

233. The delepicant says that this is what he meant by the previous destricts.

refers without the prescription of scalable goods, was, ho some effect, may regarded with the times of scalable, was, ho some effect, may regarded with the times of scalable, was and not be artisalized best 19 bit belong spiring to you at that time about the prescription of the both head of was impactable.

This less has withes produced on the other side, whom they have employed for a long time. In 1816, Goodyes: to d.Mr. Gilbert that he had beard that there had been such a thing as the introduction of steem for the purpose of curing goods, and expressed appellewation that it would affect his patent; and subsequently Mr. Pi'ou informed Mr. Goodyes: that he had discoved a mide of curing rubber by steam, and Goodyes advised him to take out a patent for it, and sent him to Mr. Gilbert for the purpose of proof, and of satisfying as to the value of the discovery. Gilbert should directed their artention to the patent taken out in figuland, and tout Tillou that he was not entitled to it, he sunsequently informed Mr. Goodyes of the value of the value of the intended of this English patent, and recommended Goodyes hy no means to allow Tillou to soply for a patent. In the face of these facts it is now pretended that tookyest, in 1144 was the discovered of the application of all binds of heat to the curing of rubber in any form, in any mode, almospheric, vapor, et am boiling acids, no matter what that he is the author of the general application of the rinciple of heat to the ouring of rubber, with or without lead. These pretensions cannot be maintained. In 1844, when Goodyear applied for a patent, the curing of rubber, so as to make mer, handable goods, by boiling in hot acids at stove 212° of heat, was a process well known and used I will give the Court a few references to the evidence, to show that the process of curing goods was extransively alcowed and practiced prior to 1857 and 1839.

An a trong's Evicence, two 1.4, desendant's printing, page 40, questions 195 to 122.)

193. He few condyers came to your establishmen

Mr. BRADY here inquied if the assign-

yes, because he has bargained and sold it to other parties for Sitt.00, and other considerations—that the while avails of this suit belong to them, and no part of it to the object the sent the store in the sent and of the suit belong to them, and no part of it to the object the sent in the sent and not one who lerds his name to the real actors, who are kept he indid the sense as a marker of calculation, and for effect. It is sed that the is a caphibal objection. If it be so, we are related to uppeal if this bill be definited for upset in a case where our opponents arealy every many sense where the sent in the s

Mr. Cutting-Yes, sir; doctors disa-Aff. CUTTING—1 es. sir; doctors deal-arce, and I dun't know why latter should not. The next witness is Caroline Whitney. (Vol I defendant's printing, page 165, questions 4 or 44) The Counsel read her testimo-ny. This witness slone made up about thirty yards horself of this cloth.

The next witness is Thomas L. Chase. (Vol. I defendant's

The near witness is Thomas L. Chase. (Vol. 1 defendant's printine, page 9.) He was the book-keeper and sales man of the Lyan Printing Company, he corroborates Mr. Stoddad, and says—(the course) here read his statement.)

The next witness is Mr. H. Thieston, who, however, proves simply that Steddard was working at that time for the Lyan Printing Company, and that they had a sore for the asie of their goods in 1835, (vol. 1, page 17). He also read the restimony of Mr. Ye, (vol. 1 defendant's printing, page 21). He also read the testimony of Mr. Weiling on, (vol. 1 defendant's printing, page 180, top of page). Tale witness was a purchaser from 1834 to 1836, of this article of sulphured groces.

Now, tesides those witnesses who thus prove the combination or rubber with sulpi or as early as 1834 and 1833, making it late manufactured articles, putting them on sale, as the public eye, making them an article of sale and profit, I also refer the Court to the evidence of Mr. Sa more, who speaks in reference to Mr. Day searly sample, ment.

expessing them to the public eye, the court to the evidence of Mr. Sa'mnor, who speaks in reference to Mr. Day's early semply ment.

Many secres and sarcsems have been visited upon him for Many secres and sarcsems have been visited upon him for haring testified that Mr. Day had so early used sulphur in combination with mober, and the idea was thrown out that combination with mober, and the idea was thrown out that form the firing was incredible, because Mr. Day was then but the firing was incredible, because Mr. Day was then but the firing was incredible, because Mr. Day was then but the firing was incredible, because Mr. Day was then but the firing was incredible, because Mr. Day was then but the firing was incredible of trade in 1834 and 1835 openly and witnesses as an avide of trade in 1834 and 1835 openly and publicly supposed for sale and found product by rea of the most preparation of sale most in the most provided in the most proposed for sale and found products. Mr. Skinner is a respectable man; the proof of that is extermely distinct; his place of residence is given; he is known by numbers of persons within reach. No attempt is known by numbers of persons within reach. No attempt is known by numbers of persons within reach. No attempt is known by numbers of persons within reach. No attempt is himser? Why it is under a remark that Mr. Day had discoved bis rubber by the use of alcohol, and, that it is said, samps the whole of his evidence as false, because alcohol would have a directly reverse effect. Now, what he says upon that subject is samply this, (reads.)

But let me or moborare this witness in that respect by a witness of the plaintiff, and a brother in-law of a party interested in these agreements, and was testifies to a late use of alcohol by the President of the Newark Robber Company, at this same period of time. This witness proves that Mr. Day, and they shout that time using alcohol for dissiving rubber. This witness is a salesman in the Newark Company. In the causet of his evidence of the wa

of New York, as early as in the year 1630, and that being there exhibited, a medal was awarded by the Institute for this grantificure.

Uses the class-examination, as effort was made to create the impression that these strikes were exhibited at the American Institute as being a more experiment, and not as specimen of a perfected discovery, but the witeress was unable to asist this ingusious sognession. This part of the case, therefore, is very abundantly stabilized.

I also refer to the evidence of Stephen file (2d vol defendants printing, page 164, question 4,) to show that the existence of sulphur was, in 1850, detected by the small, somuch so as to be a serious objection to the goods.

Mr. Alexander Strong (4d vol defendants printing, page 189 and 141) teatifies to the same silect.

As effect was made on the part of the defendants to obtain possession of the b own of this "Eagle Company," for the purpose of laying before the Court, the whole of their transaction in reference to the manufacture of sulphur and rubter. By referring to the evidence of loan Bigelow (vol. 2 defendant's printing page 83), the Treasure of the Eagle Company, it appears that these books were taken possession to by Mr. Judsop, one of the plaintiff's coursel, and be, with his usual good some and just appreciation of expediency, has held on to them ever since. Mr. Bigelow was called on to predoce them; but he proved that they had been taken by Mr. Judsop, and that he, like a very discoret and fault of coursel, but kept them ever since.

Mr. Judson—"They are in Court."

Yes, "in Court," but not in evidence.

Yes, "in Court," but not in evidence.

Mr. Judson—"They are in Court."
Yes, "in Court." but not in evidence.
They are like very many matters that are asserted, but are not found in the poods. However, Mr. Blgolow says that goods were manufactured of subjust and rubber by that company; that they contained that prefuciar and unmistable ingredient, and that is sufficient for our purpose, books or no books.

The next witness is Mr. Luke Bigelow, who was the agent of the Pagic Company from Joly, 1828 to the summer of 1837; and he proves that Mr. Hay ward was the principal at that factory, and that met if the goods were sent for sale to another establishment in Boston, kept by Mr. Haynes. What can be said against this evid one? Cau there be say escape from such an uninterrupted said for such a length of time of these sulphur so de?

I also refer to the testimony of Timothy Newall, the copartier of Humphrey, and who held the interest of Hayward, in his name, as a cover, the latter being involved at that time in difficulties. (Newell's affidavit, at the beginning of second vol., plaintiff a pintiful.) He was examined on behalf of the plaintiff. (See also an exhibit marked E. page 45.) Mr. Newell in that deposition, gives a very clear and distinct account of the transactions of the Eagle Company during all this time, and who mode know better than he I he hard the hands; was the partine of Hayward; and he have company during the time, and who mode know better than he I he hard the hands; was the partine of Hayward; and he amo proves the manufacture and said of these goods by the company during the toquit Mr. Newell, without admitting that he has contradicte a nime of in a point where he had an interest in so doing. I am free to declare that where his own interest is concerned he is not much to be relied upon. I will print the provide them all the court for a fuller countieration of them to the printed brief.

I now introduce a witness named Nathan Childs (vol. t., p. 168, defendant's printit g.) who testifies that in 1837 he bought this kind of goods of the E

and, among other a ticles, a carriage cloth, and he smell sulphur in it.

Wim. Beers, whose evidence will hereafter be found extremely toportant in the cuiting department, says that in 1858 and 1877 he worked for the Eagle Company, peddled the goods made by that company about the country, and was afterward employed also by Goodyear for the purpose of experimenting in rubber and sulphur. He proves that the goods menufactured by that company contained sulphur, that they sold them about the country, that they smelt of sulphur, and that he had a difficulty in disposing of them for that reasor, especially to laste of refined sense of smell. The reax witness is Mr. Samuel Sweetzer, a stockholder in the Eagle Company. He contributed tweaty five dollars to start Hayward in that company, at Woburn I think he was at one time President of the company. He states that this company in anotactured life preservers and various other articles, that they contained brimstone, that they smelt of it, and that the smell was very perceptible. This is a witness strengly inclined to the other side, and called by them.

Another witness, Mrs. Eddy, also proves the use and existence of sulphur. She gays she saw Hayward haves agastity of sulphur. "I a ked what he did with the sulphur, and he said he can't." Now another piece of evidence in the at app of an afficati, (Hayward & Dapolition Zahibit, vol. II. plaintiff a printing) is very striking.

Existence.

I, the undersiped, Nathand stayward, of Woburs, is the aspect of an afficat, that was a sumfacturer, say, at the request of Mr. Herace H. Day, in one cane to a suit of which I unstand him to be a party, that in october, 1884, I made the first entering the same accust, I made roboton, I made a composition of India rubber, and applor, and hampbirch, and aprendition of india rubber in against of the same accust, I made roboton, and in manife experiments in the same, from that inne to the present; inmediately afterward, in the same accust, I made roboton of India rubber in agains of the surp